

ISSUE DATE: January 22, 1997

DOCKET NO. P-421/EM-95-1083

ORDER DENYING PETITION AND INITIATING AN INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the US WEST
Communications, Inc. Proposal to Increase the
Rates for Customized Call Management
Services

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PROCEDURAL HISTORY

On October 19, 1995, US WEST Communications, Inc. (US WEST or the Company) filed a proposal to increase the rates for Customized Call Management Services (CCMS). The proposal was filed pursuant to Minn. Stat. § 237.60, subd. 2(b), which governs rate increases for services subject to emerging competition. US WEST stated that the proposed increase would cure a pricing anomaly between the packaged services in the proposal and certain separate services included in the package. US WEST also stated that it did not intend to implement the changes in CCMS pricing until the Company received Commission approval of the changes.

On March 14, 1996, the Department of Public Service (the Department) filed comments disagreeing with the proposed rate increase. The Department recommended an alternative rate decrease to address the pricing anomaly cited by US WEST.

On March 25, 1996, US WEST filed responsive comments disagreeing with the Department's recommended rate decrease.

On April 1, 1996, the Department filed supplemental comments. The Department continued to recommend that the Commission modify US WEST's rate increase proposal.

On December 3, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE US WEST RATE PROPOSAL

US WEST proposed an increase in rates for Customized Call Management Services, a feature package marketed to business customers. The package consists of three services--CONSULTLINE (Call Hold), Call Transfer, and Three-Way Conferencing.

The rate for CCMS 1-6 Line Service is currently \$5.00; the rate for CCMS 7+ Line Service is currently \$3.50. Business Call Transfer Service, which is one of the CCMS packaged features, is priced as a separate service at \$5.00. Under US WEST's proposal, CCMS 1-6 Line Service would be increased from \$5.00 to \$6.00 and CCMS 7+ Line Service would be increased from \$3.50 to \$4.50. US WEST reasoned that this repricing would cure the anomaly between the price of the service package, which includes Business Call Transfer, and the price for Business Call Transfer as a separate offering.

In its petition, US WEST stated that it did not intend to implement the CCMS price changes until the Commission approved the proposal. US WEST requested that the Commission issue an Order approving the proposal at least two weeks before February 1, 1995, the date US WEST planned to let the rates go into effect.

II. MINN. STAT. § 237.60, SUBD. 2 (b)

Minn. Stat. § 237.60, subd. 2 (b) allows a company to increase the rate for a service subject to emerging competition effective 30 days after notice is given. An interested party may file comments on the proposed rate increase within 30 days of the filing. If an objection is filed, the rate increase will nevertheless be deemed approved unless within 60 days of the filing the Commission determines that the increase is potentially contrary to the public interest. Upon such a determination, the Commission shall, within 60 days of the filing, order that the rate increase is interim in nature and subject to refund. The rate increase is not refundable if interim rates have not been ordered. If a rate is subject to refund, the Commission, after a contested case or an expedited proceeding, must make a final decision regarding the propriety of the rate increase within six months of the filing, or in the case of a contested case before an administrative law judge, within ten months. If the Commission does not do so, the price change is deemed approved.

III. COMMENTS OF THE PARTIES

A. US WEST

US WEST stated that it intends its proposed price increase to cure a pricing anomaly which remained after the 1995 resolution of access charge negotiations in Docket No. P-999/C-93-90.¹

US WEST offered a number of reasons that the Commission should accept its request for a rate increase and reject the Department's recommendation for a rate decrease.

First, US WEST stated that the Department inappropriately suggested price changes for services not included in US WEST's filing. Second, US WEST argued that the Department should not have used a price elasticity factor from Docket No. P-999/C-93-90 to calculate its proposed rate decrease in this docket. Third, the Department's proposed rate decreases would

¹ In the Matter of the Commission Solicitation of Comments Regarding Access Charges, ORDER GRANTING CLARIFICATION (April 21, 1995), and ORDER GRANTING CLARIFICATION (July 21, 1995).

distort US WEST's rate relationships between products. Fourth, US WEST stated that there are valid market-based reasons for its proposed increase to CCMS rates.

US WEST stated that its proposed rate increase should be deemed approved by operation of law, pursuant to Minn. Stat. § 237.60, subd. 2(b). US WEST argued that it did not waive the time limits of that statute, under which the proposal is deemed approved within 60 days of the filing if the Commission does not act upon it. Although US WEST stated in its October 19, 1995 petition that it "does not intend to implement the changes in CCMS until the Commission has approved the proposal," US WEST claimed that the language was not meant to waive the statutory time frames. US WEST stated again in its March 26, 1995 filing that it did not intend to implement the rate change until the Commission approved the filing. The Company stated further,

Thus, although the statute permits interim rates, USWC has elected not to implement interim rates for Customized Call Management Service (CCMS). However, the statute still requires a decision by the Commission within the time frames set by the statute.

US WEST asserted that this statement in its March 25, 1995 filing indicated that it did not waive any time provisions of Minn. Stat. § 237.60, subd. 2(b).

Although US WEST believed that its proposed rate increase should be deemed approved by operation of law, US WEST agreed to cooperate in any rate investigation the Commission might order.

B. The Department

The Department stated that the settlement approved in Docket No. P-999/C-93-90 changed the rates for a number of US WEST services, including CCMS, in order to achieve income neutrality for US WEST. Now, less than four months after the Commission's final decision in the P-999/C-93-90 docket, US WEST is asking for a price increase for CCMS.

The Department stated that a decrease in the rate for Business Call Transfer service from \$5.00 to \$4.00 would be a better means of curing the pricing anomaly than the increase to CCMS suggested by US WEST. Working with information from the P-999/C-93-90 docket, the Department calculated that its suggested price reduction would have a smaller revenue impact on US WEST than US WEST's proposal, and would result in increased revenues for US WEST.

The Department further recommended that US WEST reduce the charge for Residence Call Transfer from \$6.00 to \$4.00. The decrease would bring the rates for Business and Residence Call Transfer to parity. The price reduction would also remove a pricing anomaly between Residence Call Transfer and CENTRON I, the service package which is analogous to CCMS on the Business side. CENTRON I, which includes Call Hold, Call Transfer, and Three-Way Conferencing for residences, is currently priced at \$5.00.

The Department stated that US WEST waived the application of the time lines in Minn. Stat. § 237.60, subd. 2(b) by stating in its October 19, 1995 petition that it "does not intend to implement the changes in CCMS until the Commission has approved the proposal." Both the

Commission and the Department construed this language to mean that the Commission need not determine if the proposed increase were contrary to the public interest or declare the increase interim in nature within 60 days of the filing. The agencies believed the Company's waiver of the time provisions in Minn. Stat. § 237.60, subd. 2(b) removed the presumption of approval for the filing, rendering the petition no different from other proposed changes to tariffs or price lists.

The Department recommended that the Commission initiate an investigation of rates for CCMS, CENTRON I and Call Transfer, pursuant to Minn. Stat. § 237.081.

IV. COMMISSION ACTION

US WEST has petitioned for a significant increase to its CCMS rates. During the course of its investigation of the rate proposal, the Department has raised important questions regarding revenue neutrality; rate impact on ratepayers; and rate relationships between packaged and free-standing services, and between the same services offered for Residential and Business customers. The Commission finds that a rate investigation, pursuant to Minn. Stat. § 237.081, is the appropriate means to resolve these and other questions which may arise regarding the rates for CCMS, CENTRON I, and Residential and Business Call Transfer.

The Commission disagrees with US WEST's assertion that the proposed price increase must be deemed approved by operation of law. US WEST made an affirmative statement in its petition that it "does not intend to implement the changes in CCMS until the Commission has approved the proposal." The Commission and the Department reasonably construed US WEST's statement as an affirmative waiver of the automatic approval process under the statute. Acting under this interpretation, the agencies treated this filing differently from the manner in which they ordinarily treat filings under Minn. Stat. § 237.60, subd. 2(b). The Department did not attempt to adhere to the 30 day time limit to lodge its objections to the filing and the Commission did not attempt to make a determination on the public interest of the filing or to declare the rate increase interim in nature within 60 days. US WEST affirmatively waived the statutory approval provisions and the Commission and the Department reasonably acted accordingly.

US WEST's statement in its March, 1996 filing that "the statute still requires a decision by the Commission within the time frames set by the statute" did not prevent or remove a waiver of the statutory time lines. First, the Commission does not consider a party's affirmative waiver of a statutory provision to be cured by the party's mere subsequent denial of the waiver. Second, US WEST's March comments were filed long past the time when an indication of non-waiver would have done any good. The March filing was long past the Department's 30 day time period for filing objections and the Commission's 60 day period to act upon the filing.

The Commission has determined that US WEST waived the automatic approval procedure under Minn. Stat. § 237.60, subd. 2(b). The Department has raised important questions regarding the Company's proposed price increase and related rates. The Commission will therefore deny US WEST's request to increase rates for CCMS at this time. The Commission will initiate an investigation, pursuant to Minn. Stat. § 237.081, to resolve issues regarding the rates for US WEST'S CCMS, CENTRON I, and Residential and Business Call Transfer.

ORDER

1. The Commission denies US WEST's October 19, 1995 request to raise rates for CCMS.
2. The Commission initiates an investigation, pursuant to Minn. Stat. § 237.081, to resolve issues regarding the rates for US WEST'S CCMS, CENTRON I, and Residential and Business Call Transfer.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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